

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 04-0653

**Rebuttal Testimony of James E. Stidham
On Behalf Of SBC Illinois**

SBC Illinois Exhibit 1.0

June 30, 2005

**REBUTTAL TESTIMONY OF JAMES E. STIDHAM, JR.
ON BEHALF OF SBC ILLINOIS**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is James E. Stidham, Jr., and my business address is 208 S. Akard Street, Room 3041, Dallas, Texas 75202.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am employed by SBC Services, Inc., a subsidiary of SBC Communications Inc. ("SBC"). I am an Associate Director in the Regulatory Planning and Policy group.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I hold Bachelors Degrees in Telecommunications and Political Science from the University of Oregon. I have also done additional graduate level coursework in Communications at the University of Iowa, and in Political Science at Portland State University.

Q. PLEASE SUMMARIZE YOUR TELECOMMUNICATIONS INDUSTRY WORK EXPERIENCE.

A. I have approximately seventeen years of telecommunications experience. In 1988, I began my career in the telephone industry at the National Exchange Carrier Association ("NECA") in the Industry Relations organization. I was responsible for developing Average Schedule methods and procedures, analyzing the impact of new technologies on the NECA member companies, developing special settlements for carriers implementing new technologies (e.g. Equal Access

and SS7) and reviewing and analyzing Federal Communications Commission (“FCC”) rule changes. I also assisted in the development of the NECA Access Charge Handbook. In 1992, I joined Bell Atlantic (now Verizon) and worked in a variety of regulatory roles both at Bell Atlantic-West Virginia and Bell Atlantic Corporate in Maryland. My responsibilities included regulatory support, intercarrier settlement, regulatory finance and marketing. In 1997, I joined American Communications Services, Inc. (ACSI), later known as e.spire Communications, Inc., and now as Xspedius Management Company, as the Director of Carrier Management. My responsibilities with ACSI included wholesale billing, the development of reciprocal compensation policy, billing methods and the billing of reciprocal compensation, industry relations, and the creation and management of their telco cost control organization. In 1998, I left ACSI to provide executive consulting services to competitive local exchange carriers (“CLECs”) and to a small incumbent local exchange carrier (“ILEC”). This consulting work involved several subjects, including intercarrier compensation, and billing and cost control operations matters. In July 2000, I joined the SBC family of companies. I work with SBC’s federal regulatory group on various policy matters, particularly universal service fund (“USF”) issues, and often serve as the SBC corporate 13-state policy witness for universal service fund matters. I also participate in the development of corporate policy for intercarrier compensation (i.e. reciprocal compensation and access charges) and have previously participated in the development of corporate policy for advanced services.

49 **Q. WHAT IS YOUR PREVIOUS EXPERIENCE PRESENTING TESTIMONY**
50 **TO STATE PUBLIC UTILITY COMMISSIONS?**

51
52 A. I previously testified before the Illinois Commerce Commission (“Commission”)
53 in Docket No. 04-0354. I have also testified before the Public Utility
54 Commission of Nevada, the Indiana Utility Regulatory Commission and the
55 Kansas Corporation Commission. I have also participated in workshops at the
56 Public Utility Commission of Texas, the Oklahoma Corporation Commission,
57 Indiana Utility Regulatory Commission, Missouri Public Service Commission and
58 the Illinois Commerce Commission.

59
60 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

61 A. The purpose of my testimony is to respond to the rebuttal testimony of Don J.
62 Wood that was submitted on behalf of U.S. Cellular Corporation (“U.S.
63 Cellular”).

64
65 **Q. WHAT IS YOUR INITIAL RESPONSE TO MR. WOOD’S**
66 **TESTIMONY?**
67

68 A. Mr. Wood seems to be recommending that the Commission should base its
69 decision in this proceeding on the sort of analysis performed by the FCC in its
70 early ETC decisions such as the FCC’s Western Wireless Order for Wyoming
71 from 2000, but that the Commission should not base its analysis on the standards
72 set forth in the FCC’s more recent ETC Order of March 17, 2005 until it has
73 instituted a rule containing those standards pursuant to its rulemaking authority
74 (Wood Rebuttal, line 138). This does not make sense, and U.S. Cellular provides

75 no explanation of why application of the more recent FCC standards should
76 require a rulemaking, while the application of earlier FCC standards should not. I
77 certainly don't think that U.S. Cellular would like to see the decision on its
78 petition deferred until after a rule is put into place. I don't believe that such a
79 procedure is necessary, and in the absence of an existing rule, the Commission
80 should make its determination in this proceeding based on its current judgment as
81 to the most appropriate standards.

82 If the Commission believes that a rulemaking is ultimately the best way to
83 institute uniform standards for the analysis of all future requests for new ETC
84 designations, then the decision in this proceeding would provide the appropriate
85 starting point for the development of a rule.

86 **Q. MR. WOOD TAKES ISSUE WITH THE TESTIMONY OF THE IITA'S**
87 **WITNESS, MR. SCHOONMAKER, REGARDING THE REQUIREMENTS**
88 **RECENTLY SET FORTH BY THE FCC IN THE ETC ORDER**
89 **(REBUTTAL, PP. 6-7). IS IT YOUR UNDERSTANDING THAT THE**
90 **COMMISSION HAS BROAD FLEXIBILITY IN DETERMINING THE**
91 **STANDARDS THAT IT WILL APPLY TO DETERMINE WHETHER**
92 **OR NOT TO GRANT ETC DESIGNATION TO A REQUESTING**
93 **CARRIER?**
94

95 A. Yes. My understanding is that Section 214(e) of the Communications Act of
96 1934, as amended by the Telecommunications Act of 1996 ("96 Act"), provides
97 to states the authority to review ETC applications, but neither the 96 Act nor the
98 FCC provides a state commission with specific requirements that the state must
99 use to determine when an application is in the public interest. The Joint Board
100 recommended decision states: "We believe that federal guidelines concerning
101 ETC qualifications should be flexible and non-binding on the states. Under our

recommendation, state commissions would retain their rights to determine eligibility requirements for designating ETCs.”¹ Similarly, the *FCC’s ETC Order* (§ 61) states: “Because the guidelines we establish in this Report and Order are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.”

Q. TO THE EXTENT THAT U.S. CELLULAR IS SUGGESTING THAT THE STANDARDS OF THE FCC’S ETC ORDER SHOULD NOT BE APPLIED IN EVALUATING U.S. CELLULAR’S APPLICATION, DO YOU AGREE?

A. No, I do not. Mr. Hoagg, a witness for the Commission staff, has made a recommendation as to how the Commission should evaluate U.S. Cellular’s application. (Hoagg Direct, p.107). I agree with Mr. Hoagg, to the extent that he recommends that the Commission use the *FCC’s ETC Order* as the basis for a review of U.S. Cellular’s ETC application.

Q: WHY DO YOU AGREE WITH MR. HOAGG’S RECOMMENDATION?

A: The framework adopted in the *FCC ETC Order* is the result of the efforts of not just the FCC, but also of the Federal-State Joint Board on Universal Service (“Joint Board”). The Joint Board and FCC have fashioned a “more rigorous”² framework for scrutinizing applications by providers for status as an eligible telecommunications carrier (ETC) and, on an ongoing basis, for evaluating the performance of carriers already granted ETC status. The *FCC ETC Order* fosters three important policy objectives. These are: first, to “improve the long-term

¹ *In the Matter of Federal-State Joint Board on Universal Service*, FCC 04J-1 Released: February 27, 2004. ¶ 10.

sustainability of the universal service fund;”³ second, to “allow for a more predictable ETC designation process;”⁴ and third, to “ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service.”⁵ This Commission's decisions regarding ETC status will “have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund.”⁶ These policy objectives seem both reasonable and rational; they are intended to preserve and advance universal service, which is the goal of Section 254 of the 96 Act.

Q. MR. HOAGG (HOAGG DIRECT, P. 23) PROVIDES A QUOTE FROM THE FCC ETC ORDER. WHY IS THIS QUOTE IMPORTANT IN TERMS OF ASSESSING THIS ETC PETITION?

A. Mr. Hoagg quoted paragraph 23 of the *FCC’s ETC Order*, “Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support” [emphasis added]. This objective is important for the analysis of ETC designations anywhere USF high cost support is available because prior to the FCC providing

² *FCC ETC Order* ¶ 2.

³ *Id.*

⁴ *Id.* ¶ 1.

⁵ *Id.* ¶ 60.

148 this guidance, there was disagreement among the various parties, at least in the
149 workshops and proceedings I attended or followed, about the proper relationship
150 between high cost support and an ETC's "normal" investment in the network.
151 There have been two schools of thought on capital budgets and USF support. One
152 school argued that as long as the carrier used the USF funding as intended by
153 254(e), other capital investment was not a factor. I will provide that I leaned
154 towards this school of thought, although I did have concerns about the impact of
155 this interpretation on universal service. The other school argued that USF support
156 must be stacked on top of the normal investment of an ETC. The USF support
157 was intended to be in addition to the normal capital expenditure of a carrier, thus
158 allowing an ETC to expand its service in to areas otherwise unserved. This
159 approach would seem to be designed to ensure that a new ETC would employ the
160 additional resources to build out its network to parts of its service areas that do
161 not currently have service from the new ETC. Based on the *FCC's ETC Order*,
162 the FCC believes the stacking approach is the correct approach for carriers
163 requesting ETC status.

164 **Q. A POINT OF CONTENTION IN THIS PROCEEDING IS THE**
165 **INTERPRETATION OF SECTION 214(E) OF THE 96 ACT, WHERE IT**
166 **STATES THAT A CARRIER "SHALL, THROUGHOUT THE SERVICE**
167 **AREA FOR WHICH THE DESIGNATION IS RECEIVED OFFER THE**
168 **SERVICES." MR. WOOD SPENDS SEVERAL PAGES (WOOD**
169 **REBUTTAL, PP. 34-37) OF HIS REBUTTAL TESTIMONY ADDRESSING**
170 **THIS ISSUE. BASED ON MR. WOOD'S OWN REBUTTAL**
171 **TESTIMONY, SHOULD THE COMMISSION REQUIRE U.S. CELLULAR**
172 **TO PROVIDE SERVICE TO ITS ENTIRE SERVICE AREA AT SOME**
173 **POINT IN THE FUTURE?**
174

⁶ *FCC ETC Order*, ¶ 60 (emphasis added).

175 A. Mr. Wood, in his rebuttal testimony, makes two statements that provide the
176 Commission with a good reason to require U.S. Cellular to build out its network
177 in remote, sparsely populated portions of U.S. Cellular's service area in the near
178 future. Mr. Wood, starting on line 274 of his rebuttal testimony, states:

179

180 The availability of even the highest quality wireline service is no
181 substitute for a mobile service with broad geographic coverage,
182 simply because the wireline service is often physically not there
183 when needed. In an area where fields being worked are far from
184 the road, and where wireline phones along the roadway are few
185 and far between, the availability of wireless communication can
186 literally save a life.

187

188 Mr. Wood then goes on to state, beginning on line 613 of his rebuttal testimony:

189 Mr. Schoonmaker assumes that the areas in which U. S. Cellular
190 does not currently have complete signal coverage are in are the
191 remote and sparsely populated areas of its proposed ETC service
192 area. If his assumption is correct, further investment by U. S.
193 Cellular in these areas as an ETC is clearly in the public interest:
194 these are the areas for which federal high-cost funding was
195 designed. [emphasis added]

196

197 As Mr. Wood indicates in his testimony quoted above, remote and sparsely
198 populated areas are the areas for which federal high cost funding was designed.
199 Therefore, any argument that a wireless carrier might make about it not being
200 financially practical to service the high cost areas, which are remote and sparsely
201 populated, is misplaced because the purpose of high cost support is not to provide
202 money to allow a carrier to service the low cost areas of its service area, but to
203 allow a carrier to recover the cost of serving the areas that without support could
204 not be served because it would not be financially viable for a carrier. With this in

205 mind, the use of high cost support in areas other than the remote and sparsely
206 populated areas (the high cost portions of a service area) would seem inconsistent
207 with using the supporting in a manner for which it was intended, as required by
208 Section 254(e) of the 96 Act.

209 **Q. ARE YOU OPPOSED TO U.S. CELLULAR RECEIVING ETC STATUS IN**
210 **SBC ILLINOIS' TERRITORY?**
211

212 A. No, if U.S. Cellular meets the public interest requirement as defined by the *FCC's*
213 *ETC Order*. I acknowledge that, based on the *FCC's ETC Order*, the bar is set
214 lower in the service area of a non-rural carrier than in the service area of a rural
215 carrier, which would allow U.S. Cellular to be granted ETC status in the service
216 area of SBC Illinois even if U.S. Cellular did not meet the high standard required
217 in a rural carrier's service area. Additionally, to borrow from the *FCC's ETC*
218 *Order*, I too "encourage state commissions to consider the requirements adopted
219 in this Report and Order when examining whether the state should designate a
220 carrier as an ETC." And I encourage the Commission to follow the
221 recommendation of Mr. Hoagg and utilize the guidelines provided by the *FCC's*
222 *ETC Order*.

223 **Q. FINALLY, EARLIER IN YOUR TESTIMONY, YOU DISCUSSED MR.**
224 **WOOD'S POSITION ON USING THE FCC'S ETC ORDER AS THE BASIS**
225 **FOR EVALUATING U.S. CELLULAR'S APPLICATION. IS THERE A**
226 **NEED FOR A RULEMAKING TO ADOPT THE FCC'S ETC ORDER?**
227

228 A. I am not a lawyer so I will not offer a legal opinion, but what I can do is point out
229 that there are two distinct parts of the *FCC's ETC Order* that are relevant to this
230 discussion. The first part discusses the designation of a carrier as an ETC. This

discussion includes the requirement to provide a five-year plan, demonstrate the ability to remain functional in emergencies, make a specific commitment to objective measures to protect customers, such as the Consumer Code for Wireless Service, and offer a local usage plan comparable to that offered by the ILEC. Additionally, this part also provides that the applicant must establish that the application is in the public interest for all requested service areas. That public interest examination includes an analysis of the benefits of increased choice; the impact on USF; any unique advantages/disadvantages of the competitor's service; and the potential for cream skimming when an ETC seeks designation below the study area level of a rural ILEC. As I discussed earlier in my testimony, it is my understanding that Section 214(e) of the 96 Act allows a state commission to determine the public interest standard, which means the Commission should be able to use the standard provided by the FCC in the ETC Order if it wants to use it. I am not aware of a need for a rulemaking to do so.

The second distinct part of the *FCC's ETC Order* addresses what the FCC now requires from an ETC under FCC jurisdiction, obtaining its ETC status under section 214(e)(6) of the 96 Act. The FCC now requires a detailed progress report, at the wire center level, on its five-year service quality improvement plan including maps detailing its progress towards meeting its plan targets; an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. Also required is detailed information on any outage of at least thirty minutes in

254 duration for each service area that potentially affects at least ten percent of the end
255 users served in a designated service area, or a 911 special facility; and the number
256 of requests for service from potential customers within the eligible
257 telecommunications carrier's service areas that were unfulfilled by the carrier
258 during the past year. The carrier shall also detail how it attempted to provide
259 service to those potential customers, as set forth in 47 C.F.R. §54.202(a)(1)(A).
260 The carrier must also provide: the number of customer complaints per 1,000
261 handsets or lines; a certification that the carrier is complying with the applicable
262 service quality standards and consumer protection rules or requirements; a
263 certification that the carrier is able to function in emergency situations; a
264 certification that the carrier is offering a local usage plan comparable to that
265 offered by the incumbent LEC in the relevant service areas; and a certification
266 that the carrier acknowledges that the FCC may require it to provide equal access
267 to long distance carriers in the event that no other eligible telecommunications
268 carrier is providing equal access within the service area.

269 As to the second part of this discussion regarding the annual reporting
270 requirements, those annual reporting requirements are not part of an ETC
271 application. The Commission could choose to open a rulemaking to address such
272 annually reporting requirements in Illinois.

273 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

274 **A.** Yes.